

MEMORANDUM

DATE: February 22, 2007

TO: Mr. Michael J. Rich, DAG
c/o Department of Insurance

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 10 DE Reg. 1249 [MCO Certification & Operations Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Insurance's (DOI) proposal to adopt new standards covering MCO eligibility for a certificate of authority and operation of the MCO's system. The regulations were published as 10 DE Reg. 1249 in the February 1, 2007 issue of the Register of Regulations. SCPD understands that the impetus for the new regulations is S.B. 295 which was signed by the Governor on July 6, 2006. SCPD has the following observations.

First, the definition of "health care service" in Section 2.0 is somewhat narrower than the same definition in proposed Regulation 1301. Although the statute refers to "physical disability" [Title 18 Del.C. §6403(d)], this is unnecessarily limiting. The word "physical" should be deleted to obviate the exclusion of mental health services from the definition. The definition could also be improved by including a reference to supplies and equipment. The comparable definition in proposed Regulation 1301 covers "supplies". Moreover, it would be preferable to explicitly refer to durable medical equipment (DME) or assistive technology (e.g. nebulizer, hearing aid, wheelchair; AAC device). See second comment on proposed Regulation 1301. Cf. Reference to "products" in Section 8.2.8.3.

Second, the definition of "medical necessity" in Section 2.0 should be amended to include "disability" and "condition". There are health conditions (e.g. cerebral palsy; pregnancy) that may require medical services but are not diseases or illnesses. Compare definition of "health care services" in Section 2.0 which includes a reference to "disability". See also reference to "disability" in definition of "health care services" in Title 18 Del.C. §6403(d) (as amended by S.B. 295).

Third, Sections 8.2.8.9 and 8.2.8.10 require notice to enrollees of the availability of grievances, arbitration, and the IHCAP system. The Department may also wish to include a reference to

“mediation”. See proposed Regulation 1301, §4.0.

Fourth, in Section 10, it would be preferable to also prohibit penalizing an enrollee and enrollee’s employer (participating in a group plan) for critical reporting to State authorities.

Fifth, consistent with the comment in the “First” paragraph above, Section 11.4.6.5 literally would not cover denials of supplies or equipment unless the definition of “services” is expanded.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

cc: The Honorable Matthew Denn
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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